

FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

OFFICE OF
MANAGING DIRECTOR

APR 30 1993

DOCKET FILE COPY ORIGINAL

John Joseph McVeigh, Esquire
Fisher, Wayland, Cooper
& Leader
1255 Twenty-third Street, N. W.
Washington, D.C. 20037-1125

92-303 /

Dear Mr. McVeigh:

This is in response to your request for refund of the hearing fee submitted by Skyline Broadcasters, Inc. (Skyline) in connection with its application for a new FM station at Kalispell, Montana.

You state that Skyline and two competing applicants were designated for a comparative hearing to select the licensee at Kalispell. Skyline timely filed its Notice of Appearance and the competing applicants, including Skyline, simultaneously filed a settlement agreement. The agreement provided that Skyline's application would be dismissed. The presiding Administrative Law Judge approved the settlement agreement, granted the application specified in the agreement and dismissed Skyline's application.

Section 1.1111(c)(4) of the Commission's rules provides for the refund of a hearing fee when a settlement agreement is filed with the presiding ALJ prior to the deadline for filing Notices of Appearance. 47 C.F.R. § 1.1111(c)(4). Our review of this matter discloses that Skyline timely filed its settlement agreement for purposes of receiving a refund.

Accordingly, your request is granted. A check, drawn in the amount of \$6,760.00 and made payable to the maker of the original check, will be sent to you at the earliest practicable time. If you have any questions concerning this refund, please contact the Chief, Fee Section at (202) 632-0241.

Sincerely,

Marilyn J. McDermott

Marilyn J. McDermott
Associate Managing Director
for Operations

BEFORE THE

Jim Federal Communications Commission

WASHINGTON, D.C.

RECEIVED

In re

Payment of A Hearing Fee by

SKYLINE BROADCASTERS, INC.,

Applicant For a Construction
Permit for a New FM Station
on Channel 292A at
Kalispell, Montana

9203038170337004
File No. BPH-910925MD

MM Docket 92-303

MAR 8 1993
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

To: The Managing Director

PETITION FOR REFUND OF HEARING FEE

Skyline Broadcasters, Inc. ("SBI"), pursuant to § 1.1111(c)(1) of the Rules, hereby seeks a refund of the \$6760.00 hearing fee tendered in response to the Commission's Public Notice, Report No. NA-155 (1992). As SBI will show herein, an immediate refund of the hearing fee SBI has paid is fully warranted.

1. SBI was one of four original applicants for Channel 292A at Kalispell. On March 2, 1992, pursuant to the Commission's Public Notice, supra, and § 1.1104(2)(c) of the Rules, SBI tendered a \$6760.00 check payable to the FCC and a completed FCC Form 155 Fee Processing Form to cover the requisite hearing fee. See Exhibit A. The staff subsequently issued its Hearing Designation Order in MM Docket No. 92-303, DA 92-1668 (adopted December 8, 1992 and released December 23, 1992), sending SBI and two remaining applicants (Mr. Tom Seabase, File No. BPH-910926MB, and Cloud Nine

Broadcasting, Inc., File No. BPH-910926MI) to comparative hearing. The HDO specified only the standard comparative issues. See Exhibit B. SBI, pursuant to § 1.221 of the Rules, timely stated its intent to appear at the hearing and to present evidence on the specified issues. See Exhibit C. However, SBI's Appearance

EXHIBIT A

FCC/MELLON

LAW OFFICES

RECEIPT COPY

MAR 02 1992

FISHER, WAYLAND, COOPER AND LEADER

1255 TWENTY-THIRD STREET, N.W.

SUITE 800

WASHINGTON, D. C. 20037-1170

TELEPHONE (202) 659-3494

TELECOPIER (202) 296-6518

WRITER'S DIRECT NUMBER

(202) 775-3544

March 2, 1992

BEN S. FISHER
(1890-1954)

CHARLES V. WAYLAND
(1910-1980)

OF COUNSEL
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MCI MAIL FWCLOC

BEN C. FISHER
GROVER C. COOPER
MARTIN R. LEADER
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CLIFFORD M. HARRINGTON
JOEL R. KASWELL
KATHRYN R. SCHMELTZER
DOUGLAS WOLOSIN
BRIAN R. MOIR
DAVID D. OXENFORD
BARRY H. GOTTFRIED
ANN K. FORD
BRUCE D. JACOBS
ELIOT J. GREENWALD
CARROLL JOHN YUNG
JOHN JOSEPH McVEIGH
BARRIE D. BERMAN
JOHN K. HANE III
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MATTHEW P. ZINN
ROBERT C. FISHER
LAUREN ANN LYNCH*
BRIAN J. CARTER
GLENN S. RICHARDS*
KELLY D. YAKSICH*

*NOT ADMITTED IN D.C.

Federal Communications Commission
Mass Media Services
P.O. Box 358170

Approved by OMB
3060-0440
Expires 2/28/93

FEDERAL COMMUNICATIONS COMMISSION
FEE PROCESSING FORM

FOR
FCC
USE
ONLY

Please read instructions on back of this form before completing it. Section I MUST be completed. If you are applying for concurrent actions which require you to list more than one Fee Type Code, you must also complete Section II. This form



"Good Morn'ing"

RADIO - 600
P. O. BOX 169
KALISPELL, MONTANA 59903-0169

20279

45R 28 97

33-48/929

EXHIBIT B

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 92-303

In re Applications of

SKYLINE
BROADCASTERS, INC.
(hereafter "Skyline")

File No. BPH-910925MD

As part of the application process, Skyline Broadcasters, Inc. (Skyline) has provided the Commission with a copy of the FAA Form 7460-1, "Obstruction Clearance Data," which contains information regarding the proposed tower height data specified in their respective applications to comply with FCC and FAA records. It is noted that the specified in the application are the actual heights, but with the FAA (FAA Form 7460-1) to correct the tower height discrepancy.

Additionally, there is a possibility that the proposed FM antennas and transmission lines will obstruct the translator's directional antenna pattern because the FM antennas will be mounted above KC-BT's antenna and the proposed FM transmission lines will be placed above

10. IT IS FURTHER ORDERED. That Skyline shall submit the information specified in Paragraph 2 to the presiding Administrative Law Judge within 30 days of the release of this Order.

11. IT IS FURTHER ORDERED. That Seabase and Cloud Nine shall submit the information specified in Paragraphs 3 and 4 to the presiding Administrative Law Judge within 30 days of the release of this Order.

12. IT IS FURTHER ORDERED. That Seabase shall submit an amendment which contains the information required by Section II, Item 6 of FCC Form 301, to the presiding Administrative Law Judge within 30 days after the release of this Order.

13. IT IS FURTHER ORDERED. That the petitions for leave to amend filed by Skyline (4-8-92) and Seabase (4-30-92) ARE GRANTED, and the corresponding amendments ARE ACCEPTED to the extent indicated herein at paragraphs 2 and 6.

14. IT IS FURTHER ORDERED. That a copy of each document filed in this proceeding subsequent to the date of adoption of this Order shall be served on the counsel of record in the Hearing Branch appearing on behalf of the Chief, Mass Media Bureau. Parties may inquire as to the identity of the counsel of record by calling the Hearing Branch at (202) 632-6402. Such service shall be addressed to the named counsel of record, Hearing Branch, Enforcement Division, Mass Media Bureau, Federal Communications Commission, 2025 M Street, N.W., Suite 7212, Washington, D.C. 20554. Additionally, a copy of each amendment filed in this proceeding subsequent to the date of adoption of this Order shall also be served on the Chief, Data Management Staff, Audio Services Division, Mass Media Bureau, Federal Communications Commission, Room 350, 1919 M Street, N.W., Washington, D.C. 20554.

15. IT IS FURTHER ORDERED. That, to avail themselves of the opportunity to be heard, the applicants and any party respondent herein shall, pursuant to Section 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for hearing and to present evidence on the issues specified in this Order. Pursuant to Section 1.325(c) of the Commission's Rules, within five days after the date established for filing notices of appearance, the applicants shall serve upon the other parties that have filed notices of appearance the materials listed in: (a) the Standard Document Production Order (see Section 1.325(c)(1) of the Rules); and (b) the Standardized Integration Statement (see Section 1.325(c)(2) of the Rules), which must also be filed with the presiding officer. Failure to so serve the required materials may constitute a failure to prosecute, resulting in dismissal of the application. See generally *Proposals to Reform the Commission's Comparative Hearing Process* (Report and Order in Gen. Doc. 90-264), 6 FCC Rcd 157, 160-1, 166, 168 (1990). *Erratum*, 6 FCC Rcd 3472 (1991), *recon. granted in part*, 6 FCC Rcd 3403 (1991).

16. IT IS FURTHER ORDERED. That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 73.3594 of the Commission's Rules, give notice of the hearing within

FEDERAL COMMUNICATIONS COMMISSION

W. Ian Gay, Assistant Chief
Audio Services Division
Mass Media Bureau

EXHIBIT C

BEFORE THE
Federal Communications Commission
WASHINGTON, D.C.

RECEIVED

JAN 12 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In re)	
Applications of)	
)	
)	
)	MM Docket No. 92-303
SKYLINE BROADCASTERS, INC.)	File No. BPH-910925MD
TOM SEABASE)	File No. BPH-910926MB
and)	
CLOUD NINE BROADCASTING, INC.)	File No. BPH-910926MI
For a Construction Permit)	
for a New FM Station on)	
Channel 292A at)	
Kalispell, Montana)	

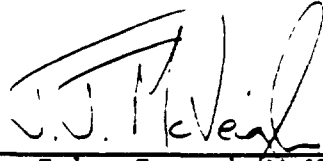
To: The Honorable John M. Frysiak,
Administrative Law Judge

NOTICE OF APPEARANCE

Skyline Broadcasters, Inc. ("Skyline"), by its counsel and pursuant to Section 1.221 of the Rules, hereby states its intent to appear on the date fixed for hearing and to present evidence on the issues specified in the Hearing Designation Order, DA 92-1668 (adopted December 8, 1992 and released December 23, 1992). Skyline files this Appearance mindful of the simultaneous joint filing by all three Kalispell applicants of a Petition for Approval of Settlement Agreement which contemplates dismissal of both Skyline and Mr. Tom Seabase's applications and the grant of the applicat:

of Cloud Nine Broadcasting, Inc. In the event His Honor grants the applicants' Joint Petition, there will be no need for the parties to appear on the date fixed for hearing and to present evidence on the specified issues.

Respectfully submitted,
SKYLINE BROADCASTERS, INC.

By 
John Joseph McVeigh
Its Counsel

FISHER, WAYLAND, COOPER
& LEADER
1255 Twenty-third Street
Northwest
Suite 800
Washington, D.C. 20037-1125
(202) 775-3544

Date: January 12, 1993

CERTIFICATE OF SERVICE

I, Renee Gray, a Secretary to the law firm of Fisher, Wayland, Cooper and Leader, hereby certify that I have this Twelfth day of January, 1993, sent copies of the foregoing "Notice of Appearance" by hand delivery to:

The Honorable John M. Frysiak,
Administrative Law Judge
Office of Administrative Law Judges
Federal Communications Commission
2000 L Street Northwest, Room 223
Washington, D.C. 20554

Charles Dziedzic, Esq.
Chief, Hearing Branch
Enforcement Division
Mass Media Bureau
Federal Communications Commission
2025 M Street Northwest, Room 7212
Washington, D.C. 20554

Richard Swift, Esq.
Tierney & Swift, P.C.
1200 Eighteenth Street Northwest,
Suite 210
Washington, D.C. 20036
Counsel to Mt. Tom Seabase

Robert Lewis Thompson, Esq.
Pepper & Corazzini
1776 K Street Northwest,
Suite 200
Washington, D.C. 20006
Counsel to Cloud Nine Broadcasting, Inc.



Renee Gray

EXHIBIT D

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FCC 93M-71

In re Applications of)	MM DOCKET NO. 92-303	30867
)		
SKYLINE BROADCASTERS, INC.)	File No. BPH-910925MD	
)		
TOM SEABASE)	File No. BPH-910926MB	
)		
CLOUD NINE BROADCASTING, INC.)	File No. BPH-910926MI	
)		
For Construction Permit for a New)		
FM Station on Channel 292A)		
in Kalispell, Montana)		

MEMORANDUM OPINION AND ORDER

Issued: February 10, 1993 ; Released: February 12, 1993

1. Under consideration are the following:

Joint Request for Approval of Settlement Agreement, filed January 12, 1993, by Cloud Nine Broadcasting, Inc. ("CNB") Tom Seabase ("Seabase") and Skyline Broadcasters, Inc. ("SBI");

Supplemental Declaration, filed January 25, 1993, by Seabase;

First Amendment to Settlement Agreement, filed February 2, 1993, by CNB, Seabase and SBI;

Letter dated February 8, 1993, from SBI; and

Comments in Support of Joint Request for Approval of Settlement Agreement, filed February 8, 1993, by the Mass Media Bureau ("Bureau").

2. The settlement agreement contemplates the dismissal of the applications of Seabase and SBI and the grant of the application of CNB. CNB would pay the legitimate and prudent expenses of Seabase and SBI in the respective amounts of \$25,000 and \$21,000. In addition, paragraph 7 of the settlement agreement, as amended, calls for the parties to forebear from opposing certain applications of other parties during the next seven years.

3. Review of the settlement agreement, as amended, and the attachments and supplements reveals that the applicants have filed the documentation required by Section 73.3525 of the Commission's Rules, which implements Section 311(c) of the

Communications Act of 1934, as amended. Specifically, principals of the applicants have stated that the respective applications were not filed for an improper purpose and that grant of the